



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

October 22, 2015

CBCA 4799-RELO

In the Matter of CHARLES J. WRIGHT

Charles J. Wright, Washington, DC, Claimant.

Elijia D. Ybarra, Supervisor, PCS Travel Section, Department of Veterans Affairs, Austin, TX, appearing for Department of Veterans Affairs.

KULLBERG, Board Judge.

Claimant, Charles J. Wright, an employee of the Department of Veterans Affairs (VA), seeks reimbursement for certain relocation expenses that he incurred when he transferred from his previous overseas position with the Department of the Navy (Navy) to his current duty station with the VA in the Washington, D.C., area. The Board previously decided Mr. Wright's claim against the Navy for relocation expenses and held that the Navy was only responsible for the expense of relocating him to his home of record (HOR) in San Diego, California. *Charles J. Wright*, CBCA 3629-RELO, 14-1 BCA ¶ 35,594, at 174,398. The Board now addresses Mr. Wright's claim against the VA.

In this matter, Mr. Wright seeks reimbursement from the VA for various relocation expenses between his HOR and the Washington, D.C., area. Those expenses include travel, shipment of his household goods (HHG), miscellaneous expense allowance (MEA), real estate expenses, temporary quarters subsistence expenses (TQSE), and relocation income tax allowance (RITA). The Board finds, as set forth below, that the VA is required to reimburse Mr. Wright for travel, shipment of his HHG, MEA, real estate expenses, and RITA, but payment of TQSE is discretionary.

Background

In response to a vacancy announcement that opened on March 29, 2013, Mr. Wright applied for a position as a program analyst (position) with the VA in Washington, D.C. The VA's vacancy announcement stated that relocation expenses were authorized. When he applied, Mr. Wright was working overseas in Japan for the Navy. Before serving overseas, he was employed by the Navy in San Diego, California.

On July 15, 2013, the VA contacted Mr. Wright by telephone and informed him that he had been accepted for the position at his current grade. In a subsequent telephone conversation with the VA's human resources (HR) office, Mr. Wright was informed that the agency's HR rules required that he be hired at the next grade above his current grade. By letter dated July 25, 2013, the VA informed Mr. Wright that he had been accepted for the position at that higher grade.

In an electronic mail message dated July 30, 2013, Mr. Wright asked the VA about reimbursement of expenses for relocating to the Washington, D.C., area. On August 2, 2013, the VA informed him that he would not be reimbursed for relocation expenses because he had been offered the position at a higher grade to assist with the expense of relocation. The VA further informed Mr. Wright in a separate electronic mail message that he would not be paid relocation expenses because of "the current fiscal climate," and the fact that his position was not deemed to be "essential to the mission of the VA" because over one hundred highly qualified applicants had applied for the same position.

On or about August 14, 2013, Mr. Wright and his spouse moved from Japan to his current duty station with the VA in Washington, D.C. Mr. Wright's claim against the VA is the following: (1) shipment of HHG from his HOR to his home in the Washington, D.C., area, \$2478; (2) real estate transaction expenses, \$11,222.40; (3) travel expenses between his HOR and the Washington, D.C. area, \$1519; (4) RITA; (5) TQSE for sixty days; and (6) MEA, \$1300. After having been informed that the VA would not pay any of his relocation expenses, Mr. Wright brings this matter to the Board.

Discussion

The issue in this matter is whether the VA has the authority to deny Mr. Wright's claim for relocation expenses after having represented in the vacancy announcement that such expenses were authorized. Statute provides that when an employee transfers in the interest of the Government, the agency to which that employee transfers shall, in accordance with regulations published pursuant to that statutory authority, reimburse or pay for the transportation of the employee and his or her dependents, shipment of HHG, real estate

transaction costs, MEA, and RITA. 5 U.S.C. §§ 5724(a)(1)-(2), (e); 5724a(a), (d), (f); 5724b; 5738 (2012). An agency may, in its discretion, authorize TQSE for an employee. *Id.* § 5724a(c). MEA is paid at a maximum of \$600 for an employee traveling without family and \$1300 for an employee traveling with family. 41 CFR 302-16.103 (2013).

It is well established that an employee's transfer is in the interest of the Government when he or she is selected in response to a vacancy announcement that authorizes relocation expenses. *Paul B. D'Agostino*, GSBCA 16841-RELO, 06-2 BCA ¶ 33,309, at 165,151; *Jenny Yoon*, GSBCA 16116-RELO, 03-2 BCA ¶ 32,354, at 160,059. Mr. Wright applied for a position for which the vacancy announcement stated that relocation expenses were authorized, and his transfer, consequently, was in the interest of the Government. The VA, in accordance with the above-referenced statutory provisions, must reimburse Mr. Wright for the expense of transportation from his HOR to the Washington, D.C., area; the expense of shipping his HHG from his HOR to his home in the Washington, D.C., area; MEA at the rate for an employee traveling with family; real estate transaction expenses; and RITA. TQSE, however, is a discretionary payment under statute, and the VA is not required to pay Mr. Wright's TQSE claim. *See Dennis L. Brink*, CBCA 2871-RELO, 13 BCA ¶ 35,231, at 172,843-44.

The VA contends that Mr. Wright received a promotion in lieu of payment for his relocation expenses, and he agreed to transfer under those terms. The vacancy announcement provided for the payment of relocation expenses, and the VA could not create an exception to the payment of those expenses by promoting an applicant unless it did so according to agency guidelines and gave notice in writing in advance to all applicants. *See Mark Huckel*, GSBCA 16019-RELO, 03-1 BCA ¶ 32,231, at 159,362-63. There is no evidence that the VA, in accordance with its guidelines, ever gave such advance notice in writing to all applicants, and the VA, consequently, had no authority to change the terms of the vacancy announcement after selecting Mr. Wright for the position.

Additionally, the VA cannot deny Mr. Wright payment of his relocation expenses because he agreed to transfer after being informed that those expenses would not be paid. *See Jenny Yoon*, 03-2 BCA at 160,059. When an employee transfers in the interest of the Government, the payment of relocation expenses is a right under statute and regulation. *Bruce E. Stewart*, B-201860 (Aug. 27, 1982). "When an agency determines that a transfer is in the interest of the Government, it does not have the authority to nullify payment of the costs of relocation by entering into an agreement with the employee to waive that payment." *Amy Preston*, CBCA 3434-RELO, 13 BCA ¶ 35,465, at 173,913. Mr. Wright's decision to transfer after the VA informed him that he would not

be paid his relocation expenses, therefore, did not amount to an enforceable agreement to waive or forego his claim for those expenses.

Finally, the Board finds no merit in the VA's contention that it could properly deny Mr. Wright payment of his relocation expenses because of the "fiscal climate" and the large number of applicants for the program analyst position. Neither an asserted lack of funding nor an abundance of applicants can be used to justify an agency's denial of payment of relocation expenses after an employee has accepted a position and relocated in the interest of the Government. *See Paul B. D'Agostino*, 06-2 BCA at 165,151; *Jenny Yoon*, 03-2 BCA at 160,059; *Bruce E. Stewart*. Even if the VA's contentions about available funding or the number of applicants were true, the fact remains that the vacancy announcement stated that relocation expenses were authorized, and the VA had no authority to deny Mr. Wright payment of those expenses.

Decision

The Board grants Mr. Wright's claim for travel for himself and his spouse from his HOR to the Washington, D.C., area; shipment of his HHG from his HOR to his home in the Washington, D.C., area; real estate transaction expenses; MEA at the rate for an employee transferring with family; and RITA. The VA shall determine the specific amount of reimbursement consistent with statute, regulation, and this decision.

H. CHUCK KULLBERG
Board Judge